


Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: June 15, 2018

Thru: Stephanie Bergeron Perdue, Interim Executive Director

Thru:  Brent Wade, Deputy Director
Office of Waste

From:  Jaya Zyman, P.E., Division Director
Permitting and Registration Support Division

Subject: Rulemaking Draft Concept and Initiation Memo
Chapter 30, Occupational Licenses and Registrations

Suggested short title: HB 1508: Notification Requirements for Training Providers of Initial Occupational Licenses regarding the consequences of a criminal conviction on eligibility.

Short Description: This rulemaking implements House Bill 1508, 85th Texas Legislature, 2017, to allow individuals the ability to petition the agency to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license due to their criminal history and were subsequently denied this license due to a criminal conviction. Applicable reimbursement would include: tuition and, application and examination fees paid for an initial occupational license. Additionally, this rulemaking also adds §30.29 to 30 TAC Chapter 30, Subchapter A, to outline requirements for training providers, eligibility for reimbursement, and procedures for requesting reimbursement.

Introduction and reason(s) for the rulemaking:

HB 1508, effective September 1, 2017, amended Texas Occupations Code Chapter 53 requiring entities that provide educational programs that prepare an individual for an initial occupational license to notify each applicant and enrollee regarding: the potential of an individual's ineligibility based on criminal history; the current guidelines under Texas Occupation Code §53.025 and any other state or local guidelines used to determine eligibility based on an individual's criminal history; and the right of an individual enrolled or planning to enroll in the educational program to request a criminal history evaluation. This notification requirement is to be provided to each applicant and enrollee for an initial occupational license, regardless of whether the applicant has been convicted of an offense.

In addition, if a licensing authority, such as TCEQ, determines that an educational entity or training provider failed to provide this notification to a person who is enrolled in their course for an initial occupational license, the licensing authority shall order the training provider to reimburse tuition, application fees, and examination fees to the individual who was denied an occupational license due to the existence of a criminal conviction.

Scope of the proposed rule:

Although the bill does not expressly require rulemaking, the agency may adopt rules to:

- Ensure consistency between 30 TAC Chapter 30 and Texas Occupations Code Chapter 53;
- Establish recordkeeping and notification requirements of training providers; and
- Provide an administrative hearing process for those individuals wishing to request reimbursement.

This Rulemaking would add the new notification requirements for training providers in a new 30 TAC §30.29 - Notification Requirements for Training Providers of Initial Training

TCEQ approves all training programs required for the occupational licenses it issues and rulemaking would add requirements for all training providers to incorporate this notification into the training courses for new licenses. TCEQ will also require training providers to have participants sign an acknowledgement that they have received notification from the training provider regarding how their criminal history may impact their ability to obtain a license. Additionally, rulemaking would provide specific directives on:

- the type of notice that training providers are required to give enrollees;
- how the agency will investigate complaints from enrollees who claim they did not receive proper notice from a training provider;
- how a training provider should demonstrate its compliance with Texas Occupations Code §53.152; and how the agency will verify whether a training provider complied with Section Texas Occupations Code §53.152;
- consequences for training providers who do not refund tuition and application and examination fees as ordered; and
- the process for an administrative hearing, if a training provider wishes to contest the agency's decision that it did not provide an enrollee proper notice.

Potential controversial concerns and legislative interest:

No controversial concerns are anticipated from training providers, applicants, or the general public.

TCEQ has not experienced any disputes between training providers and applicants regarding fees for educational programs or application/examination fees from application denials resulting from criminal background history reviews.

Potential alternatives:

In the absence of rulemaking, the agency would still have the authority to require training providers to provide the required notification and order training providers to reimburse following an agency determination. However, the process for individuals enrolled in a course to request reimbursement, the procedure for agency determination of failure to provide notice, and the consequences of a training provider ignoring an order to reimburse an individual would be unknown or unclear.

Effect on the:

- **Regulated Community:** Training providers offering courses that lead to an initial license are required to notify individuals of their right to a criminal history evaluation.

Currently, most training providers for initial licenses are already notifying individuals enrolled in their courses that a criminal history is part of the application or renewal process and that certain convictions may lead to license denial and encouraging them to seek a criminal history evaluation if they have concerns with their criminal history. However, not all training providers are doing this consistently or maintaining adequate records of these notifications. This rulemaking would clarify the requirement for training providers to ensure consistency and transparency.

- **Public:** This bill applies to any individual who is enrolled in an educational program or any applicant enrolling in an educational program who is pursuing an initial occupational license, after the effective date of the bill, and the occupational license is denied because the individual has been convicted of an offense. These individuals are now entitled to reimbursement for any tuition and application and examination fees paid, in the event they did not receive the required notifications.
- **Agency programs:** TCEQ does not assess an additional fee to administer criminal background checks or and does not currently assess a fee to process criminal history evaluations. The agency currently receives approximately 45 to 65 evaluation requests per year, which the agency absorbs with current resources. Without knowing how many more potential applicants would be requesting evaluations because of this bill, it is difficult to quantify the actual fiscal impacts from an increased number of evaluations at this time.

Proposed schedule and constraints:

Anticipated Proposal Date:	December 2018
Anticipated Adoption Date:	May 2019

Planned stakeholder involvement:

TCEQ provided outreach to all TCEQ approved training providers with active courses by email and by follow-up letter in July 2017 to formally communicate the new statutory requirements.

In addition, notifications of the upcoming rulemaking will continue to be made at each scheduled agency advisory committee meetings (Water Utility Operator Licensing Advisory Committee (WUOLAC), Drinking Water Advisory Work Group (DWAAG), and Irrigator Advisory Committee (IAC)), TCEQ Trade Fair, Public Drinking Water Conference, TCEQ external public website, and via training provider regional schools and their respective websites.

Because this is a statutory requirement with little or no controversy, no additional stakeholder meetings are being proposed beyond those outreach efforts mentioned above.

In addition, a formal public hearing will be held during the rulemaking public comment period.

Statutory authority:

- Texas Water Code, §37.002. The commission shall adopt any rules necessary to: (1) establish occupational licenses and registrations prescribed by Texas Water Code, §§26.0301, 26.3573, 26.452, and 26.456, Texas Health and Safety Code, §§341.033, 341.034, 361.027, and 366.071, and Texas Occupations Code, §1903.251; (2)

establish classes and terms of occupational licenses and registrations; and (3) administer the provisions of this chapter and other laws governing occupational licenses and registrations under the commission's jurisdiction.

- Texas Occupations Code, Chapter 53, Consequences of Criminal Conviction.

Direction and Guidance:

Rule or Non-Rule Project Number: 2018-024-030-WS

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attachment: Enrolled versions of HB 1508

NOTE: *TR will submit electronic notice to the following after ED Briefing:*

Jim Rizk
Office of General Counsel